

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
BEFORE THE ADMINISTRATOR

In the Matter of:)	Docket No. RCRA-I-94-1071
)	
The Commonwealth of Massachusetts)	Complaint, Compliance Order
Massachusetts Highway Department)	and Notice of Opportunity
Ten Park Plaza, Room 3534)	for Hearing
Boston, MA 02116-3973)	
)	
EPA I.D. No. MAD980734263)	
No. MAD980734297)	
No. MAD985278308)	
)	
Proceeding under Section)	
3008(a) of the Resource)	
Conservation and Recovery)	
Act, 42 U.S.C. § 6928(a))	

This Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). The Complainant is the Regional Administrator, United States Environmental Protection Agency (EPA), Region I. The Respondent, Massachusetts Highway Department of the Commonwealth of Massachusetts (Respondent), is hereby notified of the Regional Administrator's determination that the Respondent has violated Subtitle C of RCRA, Section 3002, 42 U.S.C. § 6922 and the regulations promulgated thereunder at 40 C.F.R. Part 262.

NATURE OF ACTION

1. This is an action under RCRA, 42 U.S.C. §§ 6901-6987 to obtain injunctive relief for violations of hazardous waste regulations promulgated pursuant to RCRA, 42 U.S.C. §§ 6901-6987. Complainant also seeks civil penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

2. Notice of commencement of this action has been given to the Commonwealth of Massachusetts (sometimes referred to as "Massachusetts") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

RCRA STATUTORY AND REGULATORY FRAMEWORK

3. RCRA was enacted on October 21, 1976 and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984. RCRA established a program for the management of hazardous wastes, to be administered by the Administrator of EPA. The regulations promulgated by the Administrator are codified at 40 C.F.R. Parts 260 through 271.

4. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, the Administrator may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when she deems the state program to be substantially equivalent to the federal program.

5. On February 25, 1981, the Administrator granted Phase I interim authorization to The Commonwealth of Massachusetts to administer its waste program in lieu of the federal program. The Massachusetts' regulations implementing its waste program, promulgated pursuant to Chapter 21C Massachusetts General Laws §§ 4 and 6, became effective on July 1, 1982. See 310 Code of Massachusetts Regulations (CMR) 30.000 et. seq.

6. On August 3, 1984, the Administrator granted Phase II interim authorization to the Commonwealth of Massachusetts to administer its waste program in lieu of the federal program.

7. On January 24, 1985, the Administrator granted final authorization to the Commonwealth of Massachusetts to administer its waste program in lieu of the federal program, 50 Fed. Reg. 3344, January 24, 1985; that authorization became effective on February 7, 1985.

8. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the Administrator may enforce the federally approved Massachusetts hazardous waste program, as well as the federal regulations promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984, by issuing an order assessing a civil penalty for any past or current violation of RCRA and requiring immediate compliance.

RESPONDENT

9. Respondent is a Department of the Commonwealth of Massachusetts, established pursuant to Chapter 16 of the Massachusetts General Laws.

10. Respondent's business address is Ten Park Plaza, Room 3534, Boston, MA 02116-3973.

11. In accordance with Chapter 81 of the Massachusetts General Laws, Respondent is charged with the responsibility to develop and maintain a safe and efficient State highway system. To accomplish this task, Respondent owns and/or operates many facilities throughout the Commonwealth.

GENERAL ALLEGATIONS

12. Respondent is a "person" as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. The facilities which are the subject of this Complaint are owned and/or operated by the Respondent as highway and motor vehicle maintenance depots (hereinafter, "the facilities"). These facilities are located at the following locations:

a. at or on Route 104 at Route 24 in Bridgewater, Massachusetts (the "Bridgewater facility");

b. at 400 D Street in South Boston, Massachusetts (the "South Boston facility");

c. at 93 Worcester Street in Wellesley, Massachusetts (the "Wellesley facility").

14. At all times relevant to the violations alleged in this Complaint, Respondent has owned and/or operated the facilities.

15. At all times relevant to the allegations set out in this Complaint, Respondent has been an owner and/or operator of these facilities which generate hazardous wastes, as defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). As an owner and/or operator of facilities which generate hazardous waste, Respondent was and is subject to RCRA and the Massachusetts authorized hazardous waste program, codified at 310 CMR 30.000 et seq.

16. As required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), Respondent notified Complainant on January 13, 1983 that the Bridgewater facility was a small quantity generator of hazardous waste; on January 13, 1983 that the South Boston facility was a very small quantity generator of hazardous waste; and on March 22, 1990 that the Wellesley facility was a small quantity generator of hazardous waste pursuant to 310 CMR 30.300.

17. Upon information and belief, each of these facilities is a large quantity generator of hazardous waste, pursuant to 310 CMR 30.340.

18. Hazardous wastes that are currently generated or have been generated by Respondent at these facilities include: methylene chloride (F002), flammable solids containing lead (D001, D008), 1,1,1 trichloroethane and trichloroethylene (F001, F002), paint related material (D001, D008, F003, F005), toluene (D001, U220), solid wastes containing cadmium and lead (D006, D008), 2,4-D (D016), methyl ethyl ketone (F001, F003, F005), gasoline mixtures (D001, D018, F005), and tetrachloroethylene and lead mixtures (D007, D008, F002).

19. As a generator of hazardous wastes, Respondent was and is subject to the generator requirements codified at 40 C.F.R. Part 262 and the hazardous waste regulations of the Commonwealth of Massachusetts set out at 310 CMR 30.300.

20. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 3008(a) and (g), Respondent is subject to an order by EPA requiring compliance with RCRA and assessing civil penalties

not to exceed \$25,000 per day of noncompliance for each violation of RCRA.

21. On April 14, 1993 and March 30, 1994, duly authorized representatives of Complainant conducted inspections of the facilities. These inspections were conducted pursuant to the authority of RCRA.

22. Complainant mailed Respondent Requests for Information pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a) and Section 104(e) of CERCLA, 42 U.S.C. § 9604 on October 21, 1993 and June 23, 1994.

23. Respondent has yet to adequately respond to either Request for Information mentioned in paragraph 22 above.

24. Respondent derived an economic benefit as a result of its failure to comply with RCRA.

CLAIMS FOR RELIEF

25. Based on Complainant's inspections of the facilities, and a review of documentation submitted to EPA by Respondent, the following violations were identified at the facilities:

The Bridgewater Facility

FIRST CLAIM--Failure to Ensure that all Personnel who Manage or Handle Hazardous Waste Receive Training

26. Pursuant to 310 CMR 30.516(1), which incorporates the requirements of 310 CMR 30.340(1)(d)1., facility personnel involved in hazardous waste management activities must successfully complete a training program that ensures compliance with 310 CMR 30.000 within six (6) months of their employment or

assignment to a facility, or their being assigned to a position new to them at the facility. The training must, at a minimum, be designed to ensure that such facility personnel are able to respond effectively to emergencies by familiarizing themselves with emergency procedures, emergency equipment, and emergency systems including, where applicable, responses to fires or explosions. Moreover, the owner or operator of a facility must maintain at the facility records demonstrating that the training or job experience required by 310 CMR 30.516(1) has been given to and completed by facility personnel.

27. Since on or prior to calendar year 1988, Respondent failed to: (a) ensure that all facility personnel involved in hazardous waste management, successfully completed the training program required by 310 CMR 30.516(1) within six (6) months of the effective date of their employment; and (b) maintain records documenting that necessary training had been given and completed by such facility personnel, in violation of 310 CMR 30.516(1).

SECOND CLAIM--Failure to Conduct an Annual Review of the Initial Training for Personnel that Manage or Handle Hazardous Waste

28. Pursuant to 310 CMR 30.516(1)(d), which incorporates the requirements of 310 CMR 30.340(1)(d)1., facility personnel involved in hazardous waste management activities must take part in an annual review of the initial training required by 310 CMR 30.516(1)(a).

29. Since on or prior to calendar year 1989, Respondent failed to ensure that facility personnel take part in

an annual review of their initial hazardous waste training, in violation of 310 CMR 30.516(1)(d).

THIRD CLAIM--Storage of Hazardous Waste for Greater Than 90 Days

30. Pursuant to 310 CMR 30.340(1), a large quantity generator may accumulate hazardous waste on-site for a period of 90 days or less without a permit and without obtaining interim status as required by Section 3005 of RCRA, 42 U.S.C. § 6925, provided the generator complies with certain regulations. If a large quantity generator accumulates waste beyond 90 days without a permit, the generator becomes subject to the interim status requirements, as codified at 310 CMR 30.500 through 30.900.

31. On or about April 14, 1993, representatives of Complainant observed that Respondent was storing a minimum of eighty-two (82) containers of hazardous waste for greater than 90 days at the Bridgewater facility without obtaining a permit or interim status, in violation of 310 CMR 30.340(1).

FOURTH CLAIM--Failure to Conduct Weekly Inspections

32. Pursuant to 310 CMR 30.686, which incorporates the requirements of 310 CMR 30.340(1)(a)1.d., a generator must inspect areas where containers are stored, looking for signs of leaking and for deterioration of containers and containment systems.

33. On or about April 14, 1993, representatives of Complainant observed that there were a minimum of eighty-two (82) containers of hazardous waste stored at the facility since at least 1988 without having been so inspected, in violation of 310

CMR 30.686.

FIFTH CLAIM--Failure to Maintain a Contingency Plan

34. Pursuant to 310 CMR 30.520, which incorporates the requirements of 310 CMR 30.340(1)(d), a generator that accumulates hazardous waste on-site must maintain a contingency plan that is designed to prevent and minimize hazards to public health, safety or welfare of the environment from fires, explosions, spills or other unplanned sudden or nonsudden releases of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water. In addition, a contingency plan is to have a clear outline of the lines of communication among facility personnel and describe the actions facility personnel shall take in response to potential or actual fires, explosions, or any other sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the environment.

35. Respondent has yet to produce a contingency plan for the Bridgewater facility, in violation of 310 CMR 30.520.

SIXTH CLAIM--Leaking Containers of Hazardous Waste

36. Pursuant to 310 CMR 30.683, which incorporates the requirements of 310 CMR 30.340(1)(a)1.a., a generator must transfer hazardous waste stored in a container observed to be leaking to a container that is in good condition.

37. On April 14, 1993, representatives of Complainant observed that Respondent failed to transfer hazardous waste stored in containers observed to be rusting and leaking to

containers in good condition, in violation of 310 CMR 30.683.

SEVENTH CLAIM--Failure to Make a Hazardous Waste Determination

38. Pursuant to 310 CMR 30.302, a generator must test its solid waste, or use knowledge of the waste, to determine if the waste is a hazardous waste.

39. On or about May 26, 1994, Respondent failed to determine if waste shipped off-site as a Massachusetts regulated waste (identified by Respondent as waste code "MA01") on manifest #MAH674681 was a federally regulated hazardous waste, in violation of 310 CMR 30.302.

EIGHTH CLAIM--Failure to Clearly Mark and Label Containers of Hazardous Waste Throughout the Period of Accumulation

40. Pursuant to 310 CMR 30.340(1)(b), a generator must label containers containing hazardous waste with the words, "Hazardous Waste" in such a way that the marks and labels are clearly visible for inspection.

41. On or about April 14, 1993, representatives of Complainant observed that Respondent failed to mark a minimum of eighty-two (82) containers of hazardous waste with the words "hazardous waste"; with the hazardous waste identified in words; the type of hazard associated with the waste indicated in words; and the date upon which each period of accumulation began, in violation of 310 CMR 30.340(1)(b).

NINTH CLAIM--Failure to Submit a Biennial Report by March 1 of Each Even Numbered Year

42. Pursuant to 310 CMR 30.332(1), a generator must submit biennial reports by March 1 of each even numbered year.

43. Respondent has yet to produce any biennial reports for the Bridgewater facility, in violation of 310 CMR 30.332(1).

The South Boston Facility

FIRST COUNT--Failure to Ensure that all Personnel who Manage or Handle Hazardous Waste Receive Training

44. Paragraph 26 is incorporated by reference.

45. Since on or prior to calendar year 1989, Respondent failed to: (a) ensure that all facility personnel involved in hazardous waste management, successfully completed the training program required by 310 CMR 30.516(1) within six months of the effective date of their employment; and (b) maintain records documenting that necessary training had been given and completed by such facility personnel, in violation of 310 CMR 30.516(1).

SECOND CLAIM--Failure to Conduct an Annual Review of the Initial Training for Personnel that Manage or Handle Hazardous Waste

46. Paragraph 28 is incorporated by reference.

47. Since on or prior to calendar year 1989, Respondent failed to ensure that facility personnel take part in an annual review of their initial hazardous waste training, in violation of 310 CMR 30.516(1)(d).

THIRD CLAIM--Storage of Hazardous Waste for Greater than 90 Days

48. Paragraph 30 is incorporated by reference.

49. On or about March 30, 1994, representatives of Complainant observed that Respondent was storing a minimum of seven (7) containers of hazardous waste for greater than 90 days at the South Boston facility without obtaining a permit or

interim status, in violation of 310 CMR 30.340(1).

FOURTH CLAIM--Failure to Conduct Weekly Inspections

50. Paragraph 32 is incorporated by reference.

51. On or about March 30, 1994, representatives of Complainant observed that there were a minimum of seven (7) containers of hazardous waste stored at the facility since at least 1989 without having been so inspected, in violation of 310 CMR 30.686.

FIFTH CLAIM--Failure to Maintain a Contingency Plan

52. Paragraph 34 is incorporated by reference.

53. Respondent has yet to produce a contingency plan for the South Boston facility, in violation of 310 CMR 30.520.

SIXTH CLAIM--Failure to Clearly Mark and Label Containers of Hazardous Waste Throughout the Period of Accumulation

54. Paragraph 40 is incorporated by reference.

55. On or about March 30, 1994, representatives of Complainant observed that Respondent failed to mark a minimum of seven (7) containers of hazardous waste with the words "hazardous waste"; with the hazardous waste identified in words; the type of hazard associated with the waste indicated in words; and the date upon which each period of accumulation began, in violation of 310 CMR 30.340(1)(b).

SEVENTH CLAIM--Failure to Submit a Biennial Report by March 1 of Each Even Numbered Year

56. Paragraph 42 is incorporated by reference.

57. Respondent has yet to produce any biennial reports for the South Boston facility, in violation of 310 CMR 30.332(1).

The Wellesley Facility

FIRST CLAIM--Failure to ensure that all personnel who manage or handle hazardous waste receive initial training

58. Paragraph 26 is incorporated by reference.

59. Since on or prior to calendar year 1989, Respondent failed to: (a) ensure that all facility personnel involved in hazardous waste management successfully completed the training program required by 310 CMR 30.516(1) within six (6) months of the effective date of their employment; and (b) maintain records documenting that necessary training had been given and completed by such facility personnel, in violation of 310 CMR 30.516(1).

SECOND CLAIM--Failure to Conduct an Annual Review of the Initial Training for Personnel that Manage or Handle Hazardous Waste

60. Paragraph 28 is incorporated by reference.

61. Since on or prior to calendar year 1989, Respondent failed to ensure that facility personnel take part in an annual review of their initial hazardous waste training, in violation of 310 CMR 30.516(1)(d).

THIRD CLAIM--Storage of Hazardous Waste for Greater Than 90 Days

62. Paragraph 30 is incorporated by reference.

63. On or about March 30, 1994, representatives of Complainant observed that Respondent was storing a minimum of nineteen (19) containers of hazardous waste for greater than 90 days at the Wellesley facility without obtaining a permit or interim status, in violation of 310 CMR 30.340(1).

FOURTH CLAIM--Failure to Conduct Weekly Inspections

64. Paragraph 32 is incorporated by reference.

65. On or about March 30, 1994, representatives of Complainant observed that there were a minimum of nineteen (19) containers stored at the facility since at least 1989 without having been so inspected, in violation of 310 CMR 30.686.

FIFTH CLAIM--Failure to Maintain a Contingency Plan

66. Paragraph 34 is incorporated by reference.

67. Respondent has yet to produce a contingency plan for the Wellesley facility, in violation of 310 CMR 30.520.

SIXTH CLAIM--Failure to Submit a Biennial Report by March 1 of Each Even Numbered Year

68. Paragraph 42 is incorporated by reference.

69. Respondent has yet to produce any biennial reports for the Wellesley facility, in violation of 310 CMR 30.332(1).

ORDER

Based on the foregoing findings, Respondent is hereby **ORDERED** to comply with the following requirements:

1. Within thirty (30) days of receipt of this Complaint, Respondent shall train facility personnel involved in hazardous waste management activities. This training shall comply with the requirements of 310 CMR 30.516(1).

2. Immediately cease storage of all hazardous waste that has been in storage for greater than 90 days to comply with 310 CMR 30.340(1).

3. Immediately conduct weekly inspections of all hazardous waste containers, to comply with 310 CMR 30.686.

4. Within thirty (30) days of receipt of this Complaint, develop a contingency plan to comply with 310 CMR 30.520.

5. Immediately transfer the contents from any container that is leaking, deteriorating, bulging or is otherwise in poor condition to a container that is in good condition to comply with 310 CMR 30.683.

6. Immediately test its solid waste or use knowledge of the waste to determine if the waste is a hazardous waste to comply with 310 CMR 30.302.

7. Immediately mark containers of hazardous waste with the words "hazardous waste"; with the hazardous waste identified in words; the type of hazard associated with the waste indicated in words; and the date upon which each period of accumulation began, to comply with 310 CMR 30.340(1)(b).

8. Submit biennial reports by March 1 of each even numbered year, if Respondent intends to act as a large quantity generator at these sites, to comply with 310 CMR 30.332(1).

9. Immediately submit a change of status notification for each facility, if Respondent intends to act as a large quantity generator at these sites.

Remedial Action to Ensure Future Compliance

10. Respondent will conduct an audit of all of its facilities to be initiated within ninety (90) days of receipt of this Complaint. All facilities will be audited within one year of EPA's approval of Respondent's Audit Work Plan. The audits

shall consist of the following three (3) components as set forth below:

a. An environmental compliance audit to assess Respondents compliance at the time of the audit with RCRA, all amendments, and all regulations corresponding thereto and any applicable local environmental regulations and ordinances, as in effect at the time of the audit (hereinafter collectively referred to as "Environmental Laws").

b. An environmental management systems audit evaluating the ability of Respondent's existing environmental management systems to:

1. Identify, respond to and resolve compliance problems and maintain compliance with the requirements of Environmental Laws at all of its facilities; and

2. Identify and comply with changes in Environmental Laws at all of its facilities.

c. A waste minimization audit evaluating Respondent's waste minimization activities at all of its facilities including:

1. An evaluation of the adequacy of the waste minimization measures undertaken by Respondent at its facilities.

2. A determination of which wastestreams constitute significant sources at its facilities to evaluate the adequacy of the waste minimization measures at its facilities.

11. Submit a schedule to complete the items described in paragraph 10 above.

12. The audit will be developed and performed by an independent third party environmental auditor.

13. Within five (5) days of receipt of this Complaint, Respondent shall submit to EPA written confirmation of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance with the requirements set forth in paragraphs 1 through 12, above. Any notice of noncompliance required under this paragraph shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance.

The information requested in this Complaint is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq. Respondent shall submit the above required information and notices to:

Patricia Hickey
Waste Management Division (HRW)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203-2211

If Respondent fails to comply with the requirements of this Complaint within the time specified, Section 3008(c) of RCRA provides for further enforcement action in Federal District Court, in which EPA may seek the imposition of additional penalties of up to \$25,000 for each day of continued noncompliance.

This Complaint shall become effective immediately upon receipt by the Commonwealth of Massachusetts, Massachusetts Highway Department.

ASSESSMENT OF PENALTY

Based on the nature, circumstances, extent and gravity of the above-cited violations, a civil penalty in the amount of \$3,835,649 is hereby assessed against Respondent. Respondent derived an economic benefit as a result of its failure to comply with RCRA. The economic benefit is \$36,661. The provisions violated and the corresponding penalties are as follows:

The Bridgewater Facility:

<u>Provision Violated</u> <u>(310 CMR)</u>	<u>Requirement</u>	<u>Economic</u> <u>Benefit</u>	<u>Penalty</u>
30.516(1)	Initial Training	\$289	\$25,289
30.516(1)(d)	Annual Training	\$4,642	\$41,642
30.340(1)	>90 Day Storage	\$16,506	\$578,506
30.686	Weekly Inspections	\$0	\$562,000
30.520	Contingency Plan	\$2,735	\$27,735
30.683	Leaking Containers	\$0	\$25,000
30.302	H.W. Determination	\$0	\$19,999
30.340(1)(b)	Container Labeling	\$0	\$25,000
30.332(1)	Biennial Reports	\$0	\$75,000
Total:		\$24,172	\$1,380,171

The South Boston Facility:

<u>Provision Violated</u> <u>(310 CMR)</u>	<u>Requirement</u>	<u>Economic</u> <u>Benefit</u>	<u>Penalty</u>
30.516(1)	Initial Training	\$175	25,175
30.516(1)(d)	Annual Training	\$2,815	\$39,815
30.340(1)	>90 Day Storage	\$561	\$562,561
30.686	Weekly Inspections	\$0	\$562,000

30.520	Contingency Plan	\$1,247	\$26,247
30.340(1) (b)	Container Labeling	\$0	\$25,000
30.332(1)	Biennial Reports	\$0	\$75,000
Total:		\$4,798	\$1,315,798

The Wellesley Facility:

<u>Provision Violated</u> <u>(310 CMR)</u>	<u>Requirement</u>	<u>Economic</u> <u>Benefit</u>	<u>Penalty</u>
30.516(1)	Initial Training	\$175	\$25,175
30.516(1) (d)	Annual Training	\$2,815	\$39,815
30.340(1)	>90 Day Storage	\$2,424	\$564,424
30.686	Weekly Inspections	\$0	\$562,000
30.520	Contingency Plan	\$2,277	\$27,277
30.332(1)	Biennial Reports	\$0	\$75,000
Total:		\$7,691	\$1,293,691

Total Economic Benefit: \$36,661**Total Penalty Amount: \$3,989,660**

Payment may be made by a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (RCRA Docket No. I-94-1071). The check should be forwarded to:

EPA - Region I
P.O. Box 360197M
Pittsburgh, PA 15251

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Regional Hearing Clerk (RCG)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203

and

Deborah Brown, Esquire
Office of Regional Counsel (RCE)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203

and

Patricia Hickey
Waste Management Division (HRW)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203

OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER


As provided by Section 3008(b) of RCRA and in accordance with 5 U.S.C. § 554, Respondent has a right to request a hearing on the issues raised in the Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In the answer, Respondent may contest any material fact contained in the Complaint or the appropriateness of the amount of the penalty. The answer shall directly admit, deny or explain each of the factual allegations contained in the Complaint and shall state (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny or explain any material factual

allegation contained in the Complaint constitutes an admission of that allegation. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default. Default by Respondent constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. The penalty assessed in the Complaint shall become due and payable by Respondent without further proceedings sixty (60) days after a final order is issued on default.

SETTLEMENT CONFERENCE

Whether or not a hearing is requested upon filing of an answer, Respondent may confer informally with the EPA concerning the alleged violations and/or the amount of penalty. Such a conference provides the Respondent with an opportunity to respond to the charges informally, and to provide whatever additional information may be relevant to the disposition of this matter. Where appropriate, the amount of the penalty may be modified to reflect any settlement agreement reached at such a conference. In addition, where circumstances so warrant, a recommendation that any or all of the charges be dropped may be made to the Regional Administrator, Region I. Any settlement shall be made final by the issuance of a Consent Agreement and Order by the Regional Administrator, Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, discretion, or assessed penalties included in the Agreement.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Deborah Brown, Office of Regional Counsel, EPA Region I, at (617) 565-3448.



John P. DeVillars
Regional Administrator

Date: 9/30/94

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, the original Complaint and one copy of the original Complaint was sent to the Regional Hearing Clerk and one copy of the original Complaint and a copy of the Rules of Practice to the Respondent, in the following manner, to the addressees below:

Original and one copy by Hand Delivery to:

Mary Anne Gavin
Regional Hearing Clerk (RCG)
U.S. Environmental Protection Agency
J.F. Kennedy Federal Building
Boston, MA 02203-2211

Copy of Original by Hand Delivery to:

Mr. Edward J. Corcoran II
Chief Counsel
Massachusetts Highway Department
Ten Park Plaza, Room 3534
Boston, Massachusetts 02116-3973

Date: 4/30/94

Deborah Brown
Deborah Brown
Assistant Regional Counsel